

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)	
)	
JAMES LESLIE SHAFER)	CASE NO. 05-21984-BHL-7
)	
<i>Debtor</i>)	CHAPTER 7
)	
)	
STATE OF INDIANA,)	
<i>Plaintiff</i>)	
)	
v.)	
)	Adv. Proc. No. _____
JAMES LESLIE SHAFER)	
)	
<i>Defendant</i>)	

COMPLAINT TO DETERMINE DISCHARGEABILITY

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, files its Complaint to determine the dischargeability of particular debts owed by the Defendant, James Leslie Shafer, under Federal Rule of Bankruptcy Procedure 4007 and 11 U.S.C. § 523(c)(1), and further brings this action for injunctive relief, restitution, civil penalties, and costs for Defendant's violation of Indiana's Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.* In support of its complaint, the Plaintiff alleges and requests relief as follows:

Jurisdiction

1. This Court has jurisdiction over the dispute at issue in this cause pursuant to 28 U.S.C. §1334. The Indiana Attorney General has authority to bring action on behalf of the State of Indiana, pursuant to Ind. Code § 24-5-0.5-4(c).

2. Count I of this adversary proceeding is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I). Count II of this adversary proceeding is a non-core proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. §1334 in that these proceedings arise in and are related to the above-captioned bankruptcy proceeding. As a result, this Court has authority to hear and determine the dispute at issue and grant the relief requested, and the Plaintiff consents to the entry of a final order in this proceeding by the Bankruptcy Judge.

3. Venue of this adversary proceeding is proper with this Court pursuant to 28 U.S.C. § 1409.

Parties

4. The Plaintiff, State of Indiana, brings this action pursuant to its status as a creditor of the Defendant Debtor arising from the Defendant Debtor's activities in Indiana that the Plaintiff alleges violate the Indiana Deceptive Practices Act, and as a representative of the interests of the citizens of Indiana and consumers aggrieved by the Defendant Debtor's activities related to his pool business.

5. The Defendant, James Leslie Shafer, is the individual debtor seeking discharge of the debts upon which the Plaintiff claims he is liable to the State of Indiana. The Defendant resides at 1056 East Castle Avenue, Indianapolis, Indiana, 46227.

Facts

A. Background Regarding the Fraudulent Transfer of James Leslie Shafer's Assets.

6. Since at least February 18, 2004, the Defendant, James Leslie Shafer, has offered items for sale via the Internet.

7. On April 18, 2005, the Defendant entered into a contract with Montgomery Dean Glover for the purchase and sale of the assets of the Defendant's business, Indy Performance Mustang, for a price of Ten Dollars (\$10.00) and other valuable consideration.

8. Based upon this contract, Montgomery Dean Glover acquired many of the assets of Indy Performance Mustang from the Defendant's business, including equipment and leasehold improvements in a building located at 675, 681, and 685 East Murry Street, the rights to use the names Indy Mustang Performance, JFK Engine Builders, all web domains associated with Indy Mustang Performance or JFK Engine Builders, the telephone number being used at the Murry Street address, all financial holdings, the use of the Retail Merchant License, and all inventory on hand.

9. Upon information and belief, the consideration given for these assets was inadequate, as the total value of the assets purchased by Montgomery Dean Glover from the Defendant likely exceeds Ten Dollars (\$10.00).

B. Allegations Related to Consumer Lawrence Kinser's Transaction.

10. On or about March 14, 2004, the Defendant, James Leslie Shafer, entered into a contract via the Internet and in person with Lawrence Kinser ("Kinser") of Valparaiso, Indiana, wherein the Defendant represented he would rebuild and overhaul a 289 hypo automobile engine for Kinser for Five Thousand Six Hundred and Fifty Dollars (\$5,650.00).

11. In reliance upon the Defendant's representation, Kinser paid the Defendant Five Thousand Dollars (\$5,000.00) toward the balance due on the automobile engine, including payments of Three Thousand Dollars (\$3,000.00) on March 14, 2004, One Thousand Dollars (\$1,000.00) on April 4, 2004, and One Thousand Dollars (\$1,000.00) on May 29, 2004.

12. The Defendant's representation set forth in paragraph 10 was made with knowledge of its falsity and with the intent to induce Kinser to make his payments to the Defendant.

13. As of today, the Defendant has yet to either deliver the engine, or to provide a refund to Kinser.

14. As a result of the Defendant's fraudulent representation, Kinser has suffered damages in the amount of Five Thousand Dollars (\$5,000.00), which is the amount of money Kinser has paid to the Defendant for the engine.

C. Allegations Related to Consumer Andrew Rompalski's Transaction.

15. On or about July 1, 2004, the Defendant, James Leslie Shafer, entered into a contract via the Internet with Andrew Rompalski ("Rompalski") of Woodbridge, Virginia, wherein the Defendant represented he would build a 302 roller automobile engine for Rompalski for Two Thousand One Hundred and Fifty Dollars (\$2,150.00), plus shipping.

16. In reliance upon the Defendant's representation, Rompalski paid the Defendant One Thousand and Seventy-Five Dollars (\$1,075.00) as a down payment on July 1, 2004.

17. On March 21, 2005, the Defendant sent an E-mail to Rompalski stating, "Andrew send me \$700 and I will send you your engine it is ready for shipping as soon as you send the money." After additional negotiation, the Defendant sent an E-mail to Rompalski on March 23, 2005, stating, "ok send me \$600 and I will send the engine to you."

18. Based upon the Defendant's fraudulent misrepresentation the engine was ready for shipping, Rompalski paid the Six Hundred Dollar (\$600.00) balance due to the Defendant on April 4, 2005.

19. The Defendant's representations set forth in paragraph 15 and 17 were made with knowledge of their falsity and with the intent to induce Rompalski to make his payments to the Defendant

20. As of today, the Defendant has yet to either deliver the engine, or to provide a refund to Rompalski.

21. As a result of the Defendant's fraudulent representation, Rompalski has suffered damages in the amount of One Thousand Six Hundred and Seventy-Five Dollars (\$1,675.00), which is the amount of money Rompalski has paid to the Defendant for the engine.

D. Allegations Related to Consumer Chris Kopriva's Transaction.

22. On or about August 27, 2004, the Defendant, James Leslie Shafer, entered into a contract via the Internet with Chris Kopriva ("Kopriva") of San Diego, California, wherein the Defendant represented he would sell a 351c automobile engine and transmission for a 1971 Ford Mustang to Kopriva, as well as test the engine.

23. In reliance upon the Defendant's representation, Kopriva paid the Defendant Three Thousand Eight Hundred Dollars (\$3,800.00) on August 27, 2004.

24. The Defendant's representation set forth in paragraph 22 was made with knowledge of its falsity and with the intent to induce Kopriva to make the payment to the Defendant.

25. As of today, the Defendant has yet to either deliver the engine, or to provide a refund to Kopriva.

26. As a result of the Defendant's fraudulent representation, Kopriva has suffered damages in the amount of Three Thousand Eight Hundred Dollars (\$3,800.00), which is the amount of money Kinser has paid to the Defendant for the engine.

E. Allegations Related to Consumer John Strizak's Transaction.

27. On or about January 5, 2005, the Defendant, James Leslie Shafer, entered into a contract via the Internet with John Strizak ("Strizak") of Akron, Ohio, wherein the Defendant represented he would build a 428 CJ automobile engine for Strizak for Three Thousand One Hundred and Fifteen Dollars (\$3,115.00).

28. In reliance upon the Defendant's representation, Strizak paid the Defendant One Thousand Five Hundred Dollars (\$1,500.00), on or about January 7, 2005, as a down payment.

29. The Defendant's representation set forth in paragraph 27 was made with knowledge of its falsity and with the intent to induce Strizak to make the payment to the Defendant.

30. As of today, the Defendant has yet to either deliver the engine, or to provide a refund to Strizak.

31. As a result of the Defendant's fraudulent representation, Strizak has suffered damages in the amount of One Thousand Five Hundred Dollars (\$1,500.00), which is the amount of money Kinser has paid to the Defendant for the engine.

F. Allegations Related to Consumer Arvin Davis' Transaction.

32. On or about April 27, 2005, the Defendant, James Leslie Shafer, on behalf of the Defendant, Montgomery Dean Glover, entered into a contract via the Internet with Arvin Davis ("Davis"), of Beale AFB, California, wherein the Defendant represented he would sell a 351 automobile engine to Davis.

33. In reliance upon the Defendant's representation, Davis paid the Defendant Three Thousand Four Hundred and Thirty-Seven Dollars (\$3,437.00).

34. The Defendant's representation set forth in paragraph 32 was made with knowledge of its falsity and with the intent to induce Davis to make the payment to the Defendant.

35. After submitting a complaint to PayPal, an on-line payment service, Davis received a partial refund of One Hundred and Seventy-Five Dollars (\$175.00).

36. As of today, the Defendant has yet to either deliver the engine, or to provide a refund to Davis.

37. As a result of the Defendant's fraudulent representation, Davis has suffered damages in the amount of Three Thousand Two Hundred and Sixty-Two Dollars (\$3,262.00), which is the non-reimbursed portion of the money Davis has paid to the Defendant for the engine.

**Count I - The Defendant's Debts Owed to the State of Indiana and Consumers
were Incurred through False Pretenses, False Representations,
or Actual Fraud and are Non-Dischargeable**

38. The Plaintiff realleges and incorporates by reference paragraphs 1 through 36 above.

39. The Defendant's representations to the consumers the consumers would be able to purchase the items as represented, as referenced in paragraphs 10, 15, 22, 27, and 32, contained misrepresentations the Defendant either knew were false or the Defendant made with such reckless disregard for the truth as to constitute willful misrepresentations, by which the Defendant intended to deceive consumers, and upon which consumers justifiably relied to their detriment.

40. The Defendant's debts owed to the State of Indiana and consumers were thus incurred through false pretenses or false representations, and are thus non-dischargeable under 11 U.S.C. § 523(a)(2)(A).

41. The Defendant's actions and representations to the consumers the consumers would be able to purchase the items as represented, as referenced in paragraphs 10, 15, 22, 27, and 32, constitute the Defendant's intentional acts of fraud.

28. The Defendant's debts owed to the State of Indiana and consumers were thus incurred through actual fraud, and are thus non-dischargeable under 11 U.S.C. § 523(a)(2)(A).

COUNT II- VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

42. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 41 above.

43. The transactions referred to in paragraphs 10, 15, 22, 27, and 32 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

44. The Defendant is a "supplier" as defined by Ind. Code § 24-5-0.5-2(a)(3).

45. The Defendant's misrepresentations to consumers that the consumers would be able to purchase automobile engines and/or the Defendant would build automobile engines for the consumers, when the Defendant knew or reasonably should have known the consumers would not receive the items as represented, as referenced in paragraphs 10, 15, 17, 22, 27, and 32 constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

46. The Defendant's misrepresentations he would build and/or deliver the automobile engines to the consumers identified in paragraphs 10, 15, 17, 22, 27, and 32, or otherwise complete the subject matter of the consumer transaction within a reasonable period of time, when

the Defendant knew or reasonably should have known he would not, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

47. The Defendant's representations to the consumers they would be able to purchase the automobile engines and/or have the automobile engines built by the Defendant's services, as advertised by the Defendant, when the Defendant did not intend to sell and/or build the automobile engines as represented, as referenced in paragraphs 10, 15, 22, 27, and 32, constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

48. The misrepresentations and deceptive acts set forth in paragraphs 10, 15, 17, 22, 27, and 32, were committed by the Defendant with the knowledge and intent to deceive and constitute "incurable deceptive acts" as defined by Ind. Code § 24-5-0.5-2(7).

49. The misrepresentations and deceptive acts complained of herein will continue and cause irreparable harm to consumers if the Defendant is not enjoined from committing such deceptive acts in the future.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, James Leslie Shafer, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendants from the following:

- a. representing expressly or by implication the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or should reasonably know it does not have;

- b. representing expressly or by implication the Defendant are able to deliver or complete the subject of the consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know they can not; and
- c. representing expressly or by implication a consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant, James Leslie Shafer, for the following relief:

- a. A finding by this Court that the Defendant is liable to the Plaintiff and consumers for debts incurred as the result of false pretenses, false representations, or actual fraud in an amount to be determined at trial, and that such debts are not discharged by the Defendant's bankruptcy;
- b. cancellation of the Defendant's unlawful contract with consumers, including but not limited to, all person's referenced in paragraphs 10, 15, 22, 27, and 32, pursuant to Ind. Code § 24-5-0.5-4(d);
- c. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers, including but not limited to, all persons referenced in paragraphs 10, 15, 22, 27, and 32 for the purchase of the Defendant's items via the Internet, in an amount to be determined at trial;
- d. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

- e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- f. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- g. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By: /s/ Terry Tolliver
Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Certificate of Service

The undersigned hereby certifies a copy of the above Complaint to Determine Dischargeability was served via the United States Bankruptcy Court's electronic transmission services upon the following parties, this 17th day of April, 2006:

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